Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
)	
Application of Cellco Partnership d/b/a)	
Verizon Wireless and SpectrumCo, LLC)	
For Consent To Assign Licenses)	WT Docket No. 12-4
)	
Application of Cellco Partnership d/b/a)	
Verizon Wireless and Cox TMI Wireless, LLC)	
For Consent To Assign Licenses	j	

REPLY TO JOINT OPPOSITION

The Diogenes Telecommunications Project (DTP) replies to the Joint Opposition, filed on March 2, 2012, to DTP's Petition to Deny the applications on the ground that Verizon Wireless's qualifications to hold Commission licenses are in serious question and that disclosure and an evidentiary hearing are required in this matter. The Joint Opposition fails to address the substance of DTP's claims. Its summary dismissal of the Petition to Deny is wholly inadequate and merely perpetuates the veil of secrecy cast over the circumstances of Verizon Wireless' conduct in cheating millions of its customers over several years.

In its Petition to Deny DTP recounted the events surrounding the phony \$1.99 data charge scheme perpetrated by Verizon Wireless from at least 2007 through 2010 in which 15 million customers were overcharged on their bills by the company's own admission. The Consent Decree and accompanying Order terminating the secret investigation by the Commission's Enforcement Bureau (Bureau) in October 2010 provided no detail on what Verizon Wireless knew and when it knew it, and what it did about the blatant, sustained

imposition of phony data charges that padded the company's bottom line to the dismay and disadvantage of a large number of its customers.

When DTP filed a Freedom of Information Act (FOIA) request it was stonewalled by

Verizon Wireless and the Bureau, which, ignoring Commission precedent, denied disclosure of
even the Bureau's letters of inquiry and provided an almost completely redacted version of

Verizon Wireless's narrative responses that had been prepared by the company itself. DTP's

Application for Review of the Bureau's denial has languished for more than a year. Late last
year the Bureau supplemented its response to DTP's FOIA request, disclosing only the
boilerplate and addresses of the letters of inquiry and continuing to withhold all of the queries
contained in the letters. This information is critical to an evaluation of whether Verizon Wireless
made false statements to the Commission in derogation of its duty of truthfulness, as well as
whether its repeated violations of the Communications Act were carried out with full knowledge.

The Joint Opposition addresses DTP's Petition to Deny in one short paragraph as follows:

Billing Practices. The Commission should deny a petition which seeks to challenge Verizon Wireless' basic qualifications due to a matter relating to Verizon Wireless's billing practices.240 The Enforcement Bureau thoroughly investigated this same matter and, in adopting a Consent Decree, "conclude[d] ... [that it] raises no substantial or material questions of fact as to whether Verizon Wireless possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization."241 That conclusion became final more than a year ago,242 and there is no basis to revisit it here. (footnotes omitted)¹

Relying on a single unsupported statement in the Bureau's order, Verizon Wireless seeks to brush aside DTP's claims without providing any substantive response whatsoever. This is unacceptable. First, the Bureau's statement was nothing more than a gratuitous formality,

¹ Joint Opposition, at page 69

inasmuch as it was neither the the Bureau's purpose nor responsibility to evaluate Verizon Wireless's qualifications in the context of that investigation. In fact, the Consent Decree specifically states, "This Consent Decree does not constitute either an adjudication on the merits, or a factual or legal finding or determination regarding any compliance or noncompliance with, or applicability of, the Act or the Rules." Second, the evidence that the Bureau did gather on Verizon Wireless's actions regarding the phony \$1.99 data charges is being needlessly withheld by the Bureau under novel and erroneous interpretations of FOIA exemptions. Pending a ruling by the Commission on DTP's Application for Review of the Bureau's decision on the FOIA request, the Commission has an obligation to make this information available to the parties in this proceeding, and may safely do so under protective order as it has done with confidential information concerning other aspects of the applicants' business arrangements. Third parties are permitted to raise qualifications issues stemming from an applicant's prior conduct in authorization proceedings; the Commission must resolve substantial claims and put them to the test of a hearing.

Here, Verizon Wireless defrauded millions of its customers for several years after it had been given notice of the unlawful practice by numerous consumer complaints and newspaper articles. It stood by these charges, telling the hapless customers that they were wrong. When the Commission finally did question the practice in an initial letter of inquiry in late 2009 (which was made public), Verizon Wireless filed a response (also made public) to the Commission that materially misrepresented what the company was doing. Even lacking the letters of inquiry and responses in the Bureau's investigation, the information that has already made public satisfies the standard for a hearing into Verizon Wireless's qualifications in this proceeding.

The Joint Opposition, therefore, does nothing to rebut the meritorious claims put forth in DTP's Petition to Deny.

Respectfully Submitted,

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March 7, 2012

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary with the law firm of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Reply to Joint Opposition" was served, as specified, this 7th day of March, 2012, to the following:

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